



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1995

Mr. David M. Douglas
Assistant Chief
Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR95-725

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34386.

The Texas Department of Public Safety (the "department") received an open records request for an audio tape of the department's radio communication relating to a shooting incident involving one of the department's troopers, Kevin D. Davis. You contend this tape recording may be withheld from the public pursuant to section 552.103(a) of the Government Code.¹ To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The requested records may therefore be withheld.

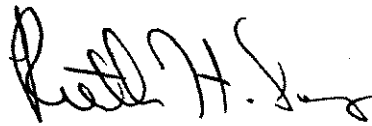
In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the record at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing

¹In Open Records Letter No. 95-376 (1995), we agreed that the tape at issue could be withheld from disclosure pursuant to section 552.108 of the Government Code. As that exception is no longer applicable, you now seek a determination as to whether the tape is excepted under section 552.103.

parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy", with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/RWP/rho

Ref.: ID# 34386

Enclosure: Submitted tape

cc: Mr. Rand LaVonn
KLIF NEWS
3500 Maple at Turtle Creek
Dallas, Texas 75210
(w/o enclosure)